

# United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA

UNITED STATES OF AMERICA

V.

JOSE JESUS GUTIERREZ RODRIGUEZ

(Name and Address of Defendant)

Venue: SAN FRANCISCO

CRIMINAL COMPLAINT

CASE NUMBER: 3:07 70300

EDL

I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about May 16, 2007 in Marin County, in the Northern District of California, the defendant, an alien, having been previously excluded, deported, and removed from the United States to Mexico, and having subsequently voluntarily returned to and remained in the United States, was found in the Northern District of California, the Attorney General of the United States and the Secretary for Homeland Security not having expressly consented to a re-application by the defendant for admission into the United States, in violation of Title 8, United States Code, Section 1326.

I further state that I am an Immigration and Customs Enforcement Officer and that this complaint is based on the following facts:

**See attached Affidavit in Support of Criminal Complaint**

Maximum Penalties:

Title 8 USC Section 1326:

20 years of imprisonment; \$250,000 fine; 3 years supervised release; and \$100 special assessment fee

APPROVED AS TO FORM:

Wendy Thomas, SAUSA

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Warrant of Arrest Requested:

☒ Yes ☐ No

Bail Amount: N/A

Signature of Complainant, Cesar Lopez

Sworn to before me and subscribed in my presence,

May 22, 2007

Date

at

San Francisco, California

City and State

**Nandor J. Vadas**

**United States Magistrate Judge**

Name & Title of Judicial Officer

Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF A CRIMINAL  
COMPLAINT CHARGING  
JOSE JESUS GUTIERREZ RODRIGUEZ  
WITH VIOLATING 8 U.S.C. § 1326,  
ALIEN FOUND IN THE UNITED STATES AFTER DEPORTATION

I, Cesar Lopez, do swear and affirm as follows,

## Purpose

1. This affidavit establishes probable cause to arrest Jose Jesus GUTIERREZ RODRIGUEZ for violating 8 U.S.C. § 1326, Alien Found in the United States After Deportation, when the defendant, an alien, having been previously excluded, deported, and removed from the United States to Mexico, and having subsequently voluntarily returned to and remained in the United States, was found in the Northern District of California, the Attorney General of the United States and the Secretary for Homeland Security not having expressly consented to a re-application by the defendant for admission into the United States, in violation of Title 8, United States Code, Section 1326.

### Relevant Statute

2. Title 8 U.S.C. Section 1326 states, in relevant part: “Any alien who has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter enters, attempts to enter, or is at any time found in, the United States, unless prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien’s reapplying for admission or with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior act” – is guilty of a felony.

## Affiant Background

3. I am a Deportation Officer with the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"). I have been employed in this capacity since July 24, 1994. Previously, I was employed as a United States Immigration Inspector with the Immigration and Naturalization Service, since December 08, 1988. My duties include the investigation and prosecution of violations of the Immigration and Nationality Act and related criminal immigration statutes. I am

currently assigned to the Prosecutions Unit of the San Francisco Field Office. In such capacity, I have reviewed the official DHS records (A76 219 430) and DHS automated data relating to Jose Jesus GUTIERREZ RODRIGUEZ ("Gutierrez Rodriguez"), which attest to the following:

#### **Case Facts and Evidence**

4. Gutierrez Rodriguez is a thirty-two (32) year-old male, native and citizen of Mexico, who last entered the United States illegally by crossing the international border in September of 2006 at Nogales, Arizona, in an unknown manner, without first having obtained the consent of the Attorney General of the United States or the U.S. Secretary of Homeland Security.

5. Gutierrez Rodriguez's official Alien Registration File contains two (2) executed Warrants of Removal/Deportation indicating Gutierrez Rodriguez was deported from the United States to Mexico on the following dates: March 23, 1997, and June 23, 2003.

6. On May 16, 2007 ICE encountered Gutierrez Rodriguez at San Quentin State Prison in Marin County, California. After being advised of his Miranda / Consular Notification Rights, Gutierrez Rodriguez voluntarily provided a sworn statement in which he admitted: his identity, that he was a citizen of Mexico, that he had previously been deported to Mexico, and that he reentered the United States without the required permission.

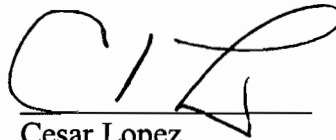
7. On May 22, 2007, a full set of rolled fingerprints belonging to Gutierrez Rodriguez was submitted to the Automated Fingerprint Identification Center ("AFIS"), for verification of identity. The fingerprint examiner positively identified the fingerprint as belonging to Gutierrez Rodriguez who had previously been removed from the United States as referenced above in paragraph 5.

8. There is no indication in the official files of the United States Department of Homeland Security that Gutierrez Rodriguez ever applied for or obtained the permission of the United States Attorney General or the Secretary of Homeland Security to reenter the United States.

#### **Conclusion**

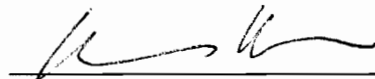
9. Based upon the facts described above, I believe that there is probable cause to believe that the defendant, Jose Jesus GUTIERREZ RODRIGUEZ, having previously been deported from the United States to Mexico, has been found in the United States without the required permission, in violation of Title 8, United States Code, Section 1326.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'C/L', written over a horizontal line.

Cesar Lopez  
U.S. Customs and Border Protection  
U.S. Dept. of Homeland Security

SUBSCRIBED AND SWORN BEFORE ME  
ON May 22, 2007

A handwritten signature in black ink, appearing to read 'N. Vadas', written over a horizontal line.

The Honorable Nandor J. Vadas  
U.S. Magistrate Court Judge  
Northern District of California